MST

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5196 OF 2007

Satish Mahadev Gogate Petitioner
versus
Smt.Asha Satish Gogate & anr. Respondents

Mr.Rajesh P. Behere for petitioner.

CORAM : A.P.DESHPANDE, J.
DATE : 12TH JULY 2007

PC :

1. The petitioner is the husband whereas respondent no.1 is the wife and respondent no.2 is the minor son. The petitioner and respondent no.1 got married in the year 1985 according to Hindu rights and customs. A son was born out of the marriage wedlock in the year 1991. The Family court granted a decree of divorce by mutual consent on 29th April 2004. The petitioner agreed to pay maintenance to the respondent no.1 so also to the respondent no.2 and has been paying the same since 2004. Proceedings are taken out in 2006 by moving an application by the respondents for enhancement of amount of maintenance and also by claiming a residence. In the said proceedings the

respondent no.1 has already filed an affidavit of examination-in-chief and thereafter the matter was fixed for cross-examination by the present petitioner. However, at that point of time the respondent no.1 noticed that various documents are not proved by the examination-in- chief affidavit, though filed on record. Hence, respondent no.1 moved an application and prayed the Family Court to permit him to lead oral evidence in examination-in-chief in furtherance of the affidavit already filed. The Family Court had allowed the said application and an order allowing the application dated 14th April 2007 is challenged by filing the present writ petition.

2. The Family Court has observed in its order that though such a course would not be in conformity with Order XXVIII, Rule 4 of the Code of Civil Procedure, the same is necessary to advance the cause of justice and thus permitted the application.

3. The learned counsel for the petitioner mainly challenges the order passed by the Family Court by submitting that such a procedure is contrary to the one prescribed by Order XVIII, Rule 4 of CPC and thus the impugned order be quashed. A

perusal of Section 10 of the Family Courts Act reveals that subject to the other provisions of the Family Courts Act and the Rules, the provisions of CPC shall apply to the suits and proceedings under the said Act. Sub section 3 makes an exception to the general rule and the same reads thus :-

> "Nothing in sub section 1 or sub section 2 shall prevent the Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject matter of suit or proceeding or at the truth of the facts alleged by one party and denied by the other."

4. In my view, it is permissible for the Family Court to deviate from the procedure laid down under the CPC. More so, when the Family Court feels that ends of justice requires a departure. As the Family Court is of the view that for finding out the truth the respondent no.1 should be permitted to lead oral evidence for proving the documents, nothing prevents the Court from so doing. Hence, the writ petition is summarily dismissed. Needless to state that in the facts and circumstances of the present case, I hope and trust that the Family Court will try to decide the proceedings as expeditiously as possible.

MST

(A.P.DESHPANDE, J.)